

Message Text

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PASS: TREASURY FOR LISTER

E.O. 11652: N/A

TAGS: EFIN, EINV, OECD

SUBJECT: COMMITTEE FOR INVISIBLE TRANSACTIONS, 119TH
SESSION

REFS: (A) DAF/INV/76.14, (B) DAF/INV/76.15, (C) DAF/INV/
75.27, (D) TIR(76)1, (E) DAF/INV/76.17, (F) DAF/INV/
76.7, (G) OECD 06200, (H) DAF/INV/72/54, (I) DAF/INV/
76.18

1. SUMMARY: INVISIBLES COMMITTEE (IC) MET APRIL 5-6,
1976 WITH US MEMBER IN CHAIR TO COMPLETE EXAMINATIONS
OF ITALIAN AND FINNISH DEROGATIONS TO CAPITAL MOVEMENTS
CODE (CMC), BEGIN EXAMINATION OF AUSTRIAN RESERVATIONS
AND DEROGATION TO CMC, AND TO COMPLETE PREPARATIONS FOR
FORTHCOMING SPECIAL SESSION ON INWARD DIRECT INVESTMENT
SCHEDULED FOR JUNE 29, 1976. IC ALSO DISCUSSED QUESTION
OF DISCRIMINATORY APPLICATION OF RESERVATIONS UNDER CMC
IN CONNECTION WITH ITALIAN RESTRICTIONS ON OUTWARD PORT-
FOLIO INVESTMENT IN REAL ESTATE TRANSACTIONS WITH NON-
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EC COUNTRIES. ACTION REQUESTED: LEGAL OPINION ON AP-

PLICATION OF ART 10 OF CMC (SEE PARAS 9 AND 10 BELOW).
END SUMMARY.

2. RECENT DEVELOPMENTS: DURING REVIEW OF WORK OF COMMITTEE ON INVESTMENT AND MULTINATIONAL ENTERPRISES (IME), SECRETARIAT POINTED OUT THAT FINAL SHAPE OF A GROUP TO SUPERVISE IMPLEMENTATION OF NEW INVESTMENT GUIDELINES IS NOT YET CLEAR. FINAL ARRANGEMENTS COULD TAKE A NUMBER OF FORMS, SOME OF WHICH MIGHT INVOLVE THE IC. HOWEVER, THE DIFFERENT NATURE OF THE WORK IN THE NEW GROUP AS COMPARED WITH THE TRADITIONAL LEGALISTIC ROLE OF THE IC WOULD MAKE IT DIFFICULT TO JOIN THE TWO EFFORTS IN ONE COMMITTEE.

3. NEW ITALIAN MEASURES AFFECTING EXCHANGE MARKETS: THE IC HEARD ORAL REPORT BY ITALIAN REP WHICH WAS FOLLOWED UP BY WRITTEN SUMMARY (REF I) COVERING IN CHRONOLOGICAL ORDER STEPS TAKEN BY ITALIAN AUTHORITIES SINCE FEB 25, 1976 TO AMELIORATE EXCHANGE MARKET DIFFICULTIES.

4. ITALIAN CMC DEROGATION FOR CLOSED-END MUTUAL FUNDS: ITALIAN REP CRITICIZED IC REPORT (REF A) AS NON-RESPONSIVE TO DIFFICULT LEGAL SITUATION IN ITALY WHICH PREVENTS REMOVAL OF DEROGATION FOR CLOSED-END MUTUAL FUNDS. HE INDICATED THAT AFTER FAILURE OF LAST EFFORT IN ITALY TO OBTAIN LEGISLATION TO PERMIT OPERATION THESE FUNDS IN ITALY, IT NOT EXPECTED THAT NEW EFFORT WILL BE UNDERTAKEN IN FORESEEABLE FUTURE. SECRETARIAT AND SEVERAL MEMBERS ARGUED THAT SINCE NUMBER OF CLOSED-END LISTED FUNDS WAS INSIGNIFICANT, AND SINCE 50 PER CENT DEPOSIT REQUIREMENT WOULD APPLY IN ANY CASE, POSSIBILITY OF ANY SUBSTANTIAL OUTFLOW OF CAPITAL FOR THIS PURPOSE WAS LIMITED. FURTHERMORE, LEGAL BASIS OF NEED FOR CONTINUATION OF RESTRICTIONS NOT CLEAR, SINCE THERE IS NO DOMESTIC LEGISLATION SPECIFICALLY PREVENTING PURCHASE OF FUND SHARES. RESTRICTIONS ARE ENTIRELY IN FORM OF EXCHANGE CONTROLS, AND THEREFORE COULD AND SHOULD BE REMOVED BY ADMINISTRATIVE ACTION. ITALIAN REP UNABLE ACCEPT THIS VIEW AND URGED IC NOT TO RECOMMEND CHANGE WHICH WOULD FACILITATE CAPITAL OUTFLOWS DURING PRESENT LIMITED OFFICIAL USE

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DIFFICULT PERIOD. IC AGREED TO CONTINUED MAINTENANCE THIS DEROGATION AND DIRECTED BUREAU TO WORK OUT WORDING WITH ITALIAN REP FOR NUMBER OF MINOR DRAFTING CHANGES IN REF A.

5. EXAMINATION OF FINNISH DEROGATION FOR INWARD COMMERCIAL CREDITS:
FINNISH MEMBER INDICATED HIS GOVERNMENT COULD ACCEPT IC

REPORT (REF B) BUT WOULD PREFER THAT IC EXAMINE QUESTION AGAIN AFTER 12 MONTHS RATHER THAN BEFORE END OF 1976. ADDED TIME WAS NECESSARY SINCE IT DOUBTFUL THAT CONDITIONS WOULD CHANGE SUFFICIENTLY SO THAT LIFTING OF RESTRICTIONS COULD BE COMPLETED BEFORE END 1976. HOWEVER, HE EXPECTED THAT THE RESTRICTIONS WOULD BE REMOVED WITHIN THE NEXT 12 MONTHS. IC AGREED TO TIME

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EXTENSION FOR NEXT EXAMINATION THIS DEROGATION. IC ALSO DIRECTED SECRETARIAT TO REVISE PARA 12, REF B TO REMOVE IMPLICATION THAT IC CRITICAL OF CONTROL SYSTEMS THAT ALLOW EVASION. UK REP CRITICAL OF IC PROPOSALS FOR ALTERNATIVE MEASURES AND SUGGESTED, ERRONEOUSLY, THAT IC MANDATE DID NOT EXTEND TO MAKING PROPOSALS FOR ALTERNATIVE POLICY STEPS WHICH COULD AVOID NEED FOR RESTRICTIONS REQUIRING DEROGATIONS TO CMC. (NOTE: ARTICLE 12 (D) OF CMC REQUIRES IC TO MAKE SUITABLE PROPOSALS DESIGNED TO ASSIST MEMBERS TO WITHDRAW THEIR RESERVATIONS).

6. FOURTH EXAMINATION OF AUSTRIAN RESERVATIONS TO CMC. AUSTRIAN CENTRAL BANK REP (HAIN) STATED THAT AUSTRIAN GOVERNMENT WISHES TO MAINTAIN ITS PRESENT RESERVATIONS TO THE CMC. IC QUESTIONED AUSTRIAN REP AT LENGTH CONCERNING EACH OF RESERVATIONS LISTED IN REF C. RATIONALE FOR CONTINUED MAINTENANCE OF RESERVATIONS WAS UPDATED AND REVISED. IC CRITICAL OF CONTINUED USE OF INVESTOR PROTECTION ARGUMENT TO SUPPORT RESERVATIONS ON PURCHASES
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OF COLLECTIVE INVESTMENT SECURITIES (ITEM V). AUSTRIAN REP FINALLY AGREED THAT INVESTOR PROTECTION IS NOT LEGITIMATE REASON UNDER CMC FOR MAINTAINING RESERVATION. NEVERTHELESS, HE WISHED TO CONTINUE RESERVATION BECAUSE OF FEARED IMPACT ON RESERVE POLICY OF EXCESSIVE PURCHASES ABROAD SUCH ISSUES BY RESIDENTS. US MEMBER URGED AUSTRIANS TO STUDY QUESTION FURTHER, ESPECIALLY TO NOTE DEVELOPMENT OF NEW TYPES OF FUNDS ABROAD AND NEW REGULATORY PROCEDURES CONCERNING THESE FUNDS WHICH SHOULD INSURE THAT THEY MEET RESERVE INVESTMENT CRITERIA OF THE AUSTRIAN CENTRAL BANK. IC ALSO CRITICAL OF AUSTRIAN DISTINCTION IN TREATMENT BETWEEN LISTED AND UNLISTED SECURITIES UNDER ITEM IV OF CMC. AUSTRIAN REP PROMISED TO LOOK INTO QUESTION FURTHER. HOWEVER, IN HIS VIEW, CHANGE IN CMC WORDING FROM UNLISTED TO UNQUOTED (ARTICLE 21 (X) OF CMC) REPRESENTED A SUBSTANTIVE INCREASE IN DEGREE OF LIBERALIZATION REQUIRED BY CMC. AUSTRIA DID NOT FEEL ABLE AS YET TO LIBERALIZE FOR UNLISTED BUT QUOTED SECURITIES. US MEMBER POINTED OUT THAT INFORMATION REQUIREMENTS FOR SUCH SECURITIES IN MANY OECD COUNTRIES WOULD MEET AUSTRIAN REQUIREMENTS FOR INFORMATION ON SECURITIES. AUSTRIAN REP INDICATED THAT REQUESTS TO PURCHASE WELL KNOWN UNLISTED SECURITIES ABROAD, SUCH AS BANK STOCKS, ARE GENERALLY GRANTED. IC ASKED AUSTRIAN REP TO CONSIDER WAYS OF MODIFYING RESERVATION TO INDICATE CONDITIONS UNDER WHICH CERTAIN TYPES OF UNLISTED SECURITIES CAN TYPICALLY EXPECT AUTOMATIC APPROVAL. SECRETARIAT WAS INSTRUCTED TO PREPARE FINAL REPORT AND CONCLUSIONS THIS EXAMINATION FOR REVIEW AT NEXT SESSION OF IC.

7. AUSTRIAN DEROGATION FOR INWARD COMMERCIAL CREDITS: IC NOTED WITH APPROVAL AUSTRIAN REMOVAL OF RESTRICTIONS LISTED IN REF D. AUSTRIAN REP INDICATED THAT REASON FOR CONTINUED RESTRICTION ON MEDIUM TERM INWARD COMMERCIAL CREDITS FOR IMPORT OF CONSUMER GOODS WAS THAT AUTHORITIES NEEDED TIME TO STUDY EFFECT OF REMOVAL OF OTHER RESTRICTIONS ORIGINALLY COVERED UNDER THIS DEROGATION. IT IS EXPECTED THAT CURRENT ACCOUNT

WILL DETERIORATE AS ECONOMIC UPSWING BEGINS IN AUSTRIA.
THIS, COMBINED WITH LESS CERTAIN OUTLOOK FOR TOURISM
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ACCOUNT, MAKES IT NECESSARY TO CONTINUE TO RESTRICT
CREDITS FOR CONSUMER IMPORTS. IC COMPLAINED THAT CON-
TROLS ON INWARD CREDITS SHOULD NOT BE USED IN LIEU OF
APPROPRIATE SELECTIVE DOMESTIC CREDIT CONTROLS. HOW-
EVER, IN VIEW OF POINTS RAISED BY AUSTRIAN REP, IC
AGREED TO TEMPORARY CONTINUATION DEROGATION THIS ITEM.

8. SPECIAL SESSION ON INWARD DIRECT INVESTMENTS: IC
REVIEWED PREPARATIONS FOR NEXT SPECIAL SESSION
SCHEDULED FOR JUNE 29, 1976. SECRETARIAT INDICATED THAT
REF E WILL BE AVAILABLE WITHIN NEXT SEVERAL WEEKS.
MEMBERS WERE URGED TO ASSURE THAT NATIONAL EXPERTS WHO
WILL ATTEND SPECIAL SESSION WILL BE FULLY PREPARED
TO DISCUSS PRESENT STATUS THEIR PROGRAMS CONCERNING IN-
WARD DIRECT INVESTMENT IN FRANK AND OPEN ATMOSPHERE.

9. ITALIAN DISCRIMINATORY TREATMENT FOR REAL ESTATE
TRANSACTIONS: DURING THIRD EXAMINATION OF ITALIAN
RESERVATIONS TO CMC AT LAST SESSION IC (SEE REF G),
IT WAS NOTED THAT OUTWARD PORTFOLIO OPERATIONS IN
REAL ESTATE ARE RESTRICTED FOR TRANSACTIONS WITH
OECD MEMBERS EXCEPT THOSE WHICH ARE ALSO MEMBERS OF
THE EC. AS NOTED IN REF F (PAGE 13), THIS PROVISION

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CONFLICTS WITH ARTICLE 9 OF THE CMC. FURTHERMORE
TRADITIONAL (ALTHOUGH NEVER FORMALLY APPROVED) INTERP-
RETATION IN IC OF ART 10 EXCEPTION TO ART 9 IS THAT
ART 10 ALLOWS POSSIBILITY OF DISCRIMINATION ONLY AS
REGARDS MEASURES OF LIBERATION TAKEN IN ADDITION
TO THOSE ENVISIONED UNDER THE CMC. AT PRESENT IC
SESSION, HOWEVER, ITALIAN REP REFUTED THIS INTERP-
RETATION AND SPECIFICALLY ASKED TO MODIFY PARA 12
REF G TO INDICATE ITALIAN MEASURES NOT DISCRIMINATORY
SINCE AUTHORIZED BY ART 10 FOR MEMBERS OF SPECIAL
GROUPS (I.E. THE EC). IN REVIEWING THIS QUESTION
IC ONCE AGAIN REFERRED TO EARLIER CONTROVERSIAL
SECRETARIAT LEGAL OPINION (REF H) WHICH CONCLUDES,
COUNTER TO INFORMAL TRADITIONAL VIEW OF THE MAJORITY
OF IC, THAT WHILE CMC PROHIBITS DISCRIMINATION (AGAINST
NON-EC MEMBERS) IN REVERSING MEASURES OF LIBERALIZATION
ALREADY TAKEN UNDER CMC, IT WOULD PERMIT DISCRIMINATION
IN LIBERALIZING NOT ONLY TRANSACTIONS BEYOND THOSE
COVERED BY CMC, BUT ALSO FOR ANY TRANSACTIONS WITHIN
SCOPE OF CMC THAT ANOTHER MEMBER OF EC HAD NOT YET
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LIBERALIZED OUTSIDE OF EC AREA. IC ENGAGED IN HEATED
DEBATE THIS ISSUE WITHOUT ACHIEVING CONSENSUS. JAP-
ANESE MEMBER SUGGESTED THAT ART 10 MEANS THAT DISCRIM-
INATION IS POSSIBLE FOR MEMBERS OF A SUB-GROUP (E.G.
THE EC COUNTRIES) ONLY IF ALL MEMBERS OF SUB-GROUP
TAKE JOINT ACTION, BUT NOT IF ACTION IS LIMITED TO
ONE OR SEVERAL MEMBERS OF SUB-GROUP AT THEIR OWN
VOLITION. MOST MEMBERS INDICATED THAT THEY WOULD
LIKE TO CONSULT THEIR LEGAL EXPERTS BEFORE MAKING
FINAL DECISION THIS ISSUE. THEREFORE, SINCE IMMEDIATE
DECISION NOT POSSIBLE, IC AGREED TO MOVE ISSUE TO AN-
NEX OF REF F, AND TO LEAVE QUESTION OPEN IN ITALIAN
CASE SO THAT THERE WOULD BE NO FURTHER DELAY IN SEND-
ING REF F TO COUNCIL. IC AGREED THAT IT WOULD ATTEMPT
TO REACH CONSENSUS ON GENERAL ISSUE INTERPRETATION

OF ARTICLE 10 CMC AT FORTHCOMING MEETING AFTER MEMBERS HAD HAD ADEQUATE TIME TO REVIEW QUESTION. IN MEANTIME, MEMBERS WERE ASKED TO SUBMIT THEIR VIEWS TO SECRETARIAT IN WRITING. SUBMISSIONS WOULD BE INFORMAL AND WOULD NOT BE DISTRIBUTED OUTSIDE LIMITED MEMBERSHIP OF IC UNLESS MEMBER REQUESTED OTHERWISE.

10. ACTION REQUESTED: US MEMBER IC REQUESTS VIEWS OF WASHINGTON AGENCIES RE INTERPRETATION OF ART 10 AND APPLICABILITY OF SECRETARIAT LEGAL ARGUMENTS REF H. (EXTRACTS POUCHES TO WASHINGTON MARCH 16, 1976). REQUEST SPECIFIC RESPONSE ON FOLLOWING THREE QUESTIONS:

(1) WHETHER DISCRIMINATION PERMITTED FOR ITEMS OF CMC NOT ALREADY LIBERALIZED BY ONE OR MORE MEMBERS OF A SPECIAL GROUP. (2) WHETHER DISCRIMINATION IS PERMITTED FOR ITEMS OF LIBERALIZATION THAT GO BEYOND LIST A AND B OF CMC, (3) WHETHER ALL MEMBERS OF SPECIAL GROUP MUST TAKE JOINT ACTION AS A GROUP TO LIBERALIZE ITEMS IN QUESTION IN ORDER TO BENEFIT FROM ART 10. SECRETARIAT LEGAL SERVICE NOW CLEARLY OF VIEW THAT DISCRIMINATION BY A SPECIAL GROUP IS PERMITTED FOR BOTH CATEGORIES (1) AND (2) ABOVE. IN VIEW OF US MEMBER IC THIS INTERPRETATION IS TOO NARROW, AND, GIVEN SIZE AND IMPORTANCE OF EC, COULD SEVERELY LIMIT SCOPE AND EFFECTIVENESS OF CMC WITHIN THE OECD. HOWEVER, QUESTION OF POLITICAL PRACTICALITY OF AN IC RULING AGAINST LIMITED OFFICIAL USE

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EC DISCRIMINATION, NOTED BY BERTRAND OF SECRETARIAT AS KEY CONSIDERATION, ALSO RELEVANT. US MEMBER WOULD APPRECIATE WASHINGTON GUIDANCE ON THIS ISSUE. NOTE: IC IS ALWAYS GREATLY INFLUENCED BY HARD INFORMATION ON THE INTENTIONS OF THE FRAMERS OF THE CMC. IF SUCH SPECIFIC EVIDENCE ON BASIC "LEGISLATIVE HISTORY" OF CMC IS AVAILABLE TO SUPPORT LIBERAL VIEW, IT WOULD BE EXTREMELY USEFUL, BOTH WITH THE IC AND WITH THE OECD LEGAL SERVICE.
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